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June 1, 2009

Security Regulations Branch  
Office of Trade  
U.S. Customs and Border Protection  
1300 Pennsylvania Avenue, NW (Mint Annex)  
Washington, DC 20229

**RE: Docket USCPB-2007-0077**  
**RIN 1651-AA70**  
**Importer Security Filing and Additional Carrier Requirements**

**Submitted via eRulemaking Portal: <http://www.regulations.gov>**

Dear Sir or Madam:

The National Coffee Association of USA (NCA) appreciates the opportunity to submit comments on the above referenced interim final rule, as published in the Federal Register 73 FR 71730 – 71785 (November 25, 2008).

The National Coffee Association represents the U.S. coffee industry, which generates \$31 billion annually in retail and foodservice sales, and conducts over \$3 billion in trade with 50 countries from Africa, Asia, and Latin America. In addition to the nearly 2,000 roasters and importers, the industry is comprised of over 21,000 coffee cafés employing persons in every state and region. Through retail, restaurant and coffee café sales, the industry serves 190 million consumers annually. NCA membership, consisting, in part, of coffee growers, exporters, importers, roasters and retailers who import coffee, will be impacted by the Importer Security Filing (ISF) and Additional Carrier Requirements rules.

NCA places a high level of importance on homeland security and believes the utmost priority must be placed on preventing terrorist weapons from being transported to the United States. At the same time, in part due to finite Customs and Border Protection (CBP) resources and risk based assessment, we believe there is a need to

be selective in what security regulations/practices are adopted, and to balance security efforts with the need to grow commerce and ensure our nation's economic well being; NCA also recognizes the challenge in striking such a balance. We commend Customs and Border Protection (CBP) for its efforts in protecting the public and appreciate the opportunity to comment on the above referenced rule.

**Ship to Party**

§§ 149.2 (d), 149.2 (f), and 149.3 (a)(6)

The rule requires that information on the “ship to party” be supplied when the initial Importer Security Filing is transmitted. The rule (§ 149.2 (d)) further requires that this data element “be updated before the goods enter the limits of a port in the United States” should data change or more accurate data become available.” More restrictive is §149.2 (f), which applies to the “ship to party” data element and requires that importers provide an “update as soon as accurate information is available [and] in no event less than 24 hours prior to arrival at a U.S. port (or upon lading at a foreign port that is less than a 24 hour voyage to the closest U.S. port).

In the case of coffee, in the normal course of business the “ship to party” can often change numerous times between the time that the vessel is laden and the time the vessel arrives in a U.S. port. We believe the significant administrative effort and associated costs incurred to monitor and file updates do not justify the limited security gain. Further, in the normal course of business the “ship to party” can change with less than 24 hours remaining before the vessel arrives at a U.S. port; it appears as though such a scenario may be a per se violation of the regulations, which is inherently unfair.

Being that the “ship to party” regularly changes in the normal course of coffee trade, we are especially concerned that any such shipments will be “red flagged,” resulting in an inspection rate increase as well as a corresponding significant cost escalation. This creates a situation where an importer has complied with the regulation, but, due to the nature of coffee trade, the trader is subject to increased costs with no corresponding enhancement to national security.

## **Public Participation**

Although CBP appears to have limited its request for comments to the six data elements set forth in section I, Public Participation, 73 FR 71731 (November 25, 2008), the National Coffee Association would greatly appreciate CBP's consideration of the following comments which may be outside the scope of CBP's original request for comments.

### **Buyer**

§§ 149.2 (d) and 149.3 (a)(2)

Similar to the situation set forth above regarding "ship to party," in the normal course of business the "buyer" also often changes numerous times between the time that the vessel is laden and the time the vessel arrives in a U.S. port. In this regard, we would reiterate our views and concerns that are presented above with regard to the "ship to party." In summary, we believe the significant administrative effort and associated costs incurred to monitor and file updates do not justify the limited security gain. Likewise, we are again concerned that any such shipments will be "red flagged," resulting in an inspection rate increases as well as a corresponding significant cost escalation.

### **Importer of record**

§§ 149.2 (d) and 149.3 (a)(3)

As in comments provided above regarding "ship to party" and "buyer," the NCA is concerned that as a result of the "importer of record" changing in the normal course of business, coffee shipments will be frequently "red flagged," thereby significantly increasing the cost of doing business when no increased security threat is present.

## **Carrier Commercial Practices**

As CBP may be aware, coffee traders are dependent on carriers to provide the bill of lading number. During the past few months, it has been at times difficult to obtain the bill of lading number in a timely manner. Although coffee traders recognize that they can make independent decisions with regard to what carrier(s) they use, any assistance CBP can provide in encouraging carriers to

provide the bill of lading numbers to traders in a timely manner would be greatly appreciated.

### **Importer Security Filing (ISF) – Rule Requirement versus Report Card**

NCA would greatly appreciate clarification regarding the baseline/metric used for recently distributed ISF filing report cards. The interim final rule states that the ISF must be submitted “no later than 24 hours before the cargo is laden aboard the vessel at the foreign port” (§ 179.2 (b)). However, it appears as though CBP might be, for report card purposes, basing the timeliness of submission on the date/time the bill of lading is filed via AMS at origin, which can be 48 hours prior to the cargo being laden, rather than on the time that the vessel is laden. Should this be the case, ISF submissions, for report card purposes, could be considered late even if they are submitted within 24 hours before the cargo is laden.

We are especially concerned about trans-shipped containers and request clarification on when the “24 hour” clock begins. For example, does it begin when the cargo is first loaded on the vessel at its original origin or with the commencement of loading of the final vessel which will call on U.S. ports? It is our understanding that the intent of the regulation is to require the submission no less than 24 hours before the cargo is laden aboard the vessel that will be calling on U.S. ports. If our interpretation of the intent of the regulation is correct, it appears that the report card baseline/metric being used may erroneously be classifying submissions as late. In summary, it would be greatly appreciated if CBP would clarify its intent regarding the treatment of ISF’s for trans-shipped containers and how the regulation is being applied for report card purposes.

### **Recognition of C-TPAT Participants**

The NCA has been an avid supporter of the Customs-Trade Partnership Against Terrorism (C-TPAT) program. We believe that to achieve national security goals a strong partnership between CBP and commercial interests is critical. We also believe that the greater the commercial incentive to participate in the C-TPAT program, the higher the participation rate will be. As such, we ask CBP to consider a formalized mechanism to provide for C-TPAT participation status as an element of CBP’s enforcement practices and as a mitigation element when considering penalties.

June 1, 2009  
Importer Security Filing  
Page Five

Again, the National Coffee Association appreciates the opportunity to submit comments on the above referenced regulation. We look forward to future opportunities to work with the CBP to achieve national security goals.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. Nelson". The signature is fluid and cursive, with a large initial "R" and "N".

Robert F. Nelson